



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEB 21 2006

Mr. John J. Duffy
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Re: MUR 5430 (Buchanan for President, Inc.
and Angela M. "Bay" Buchanan, in her
official capacity as treasurer)

Dear Mr. Duffy:

On January 17, 2006, the Federal Election Commission accepted the signed conciliation agreement submitted on your clients' behalf in settlement of violations of 2 U.S.C. §§ 432(h), 434(b), and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter. Enclosed please find a Statement of Reasons from Commissioner Weintraub explaining her vote. Enclosed you will also find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 60 days of the conciliation agreement's effective date.

Documents related to the case, including the Statement of Reasons, will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondents and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Mark A. Goodin
Attorney

Enclosures

1. Statement of Reasons
2. Conciliation Agreement

cc: Patrick J. Buchanan

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4) MUR 5430
5 Buchanan for President, Inc. and Angela)
6 M. "Bay" Buchanan, in her official)
7 capacity as treasurer)
8

9 **CONCILIATION AGREEMENT**

10
11 This matter was initiated by the Federal Election Commission ("Commission"), pursuant
12 to information ascertained in the normal course of carrying out its supervisory responsibilities.
13 The Commission found probable cause to believe that Buchanan for President, Inc. and Angela
14 M. "Bay" Buchanan, in her official capacity as treasurer ("Respondents"), knowingly and
15 willfully violated 2 U.S.C. §§ 432(h), 434(b), and 441a(f).¹

16 NOW, THEREFORE, the Commission and the Respondents, having duly entered into
17 conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

18 I. The Commission has jurisdiction over the Respondents and the subject matter of
19 this proceeding.

20 II. Respondents have had a reasonable opportunity to demonstrate that no action
21 should be taken in this matter.

22 III. Respondents enter voluntarily into this Conciliation Agreement ("Agreement")
23 with the Commission.

¹ All of the facts recounted in this Conciliation Agreement occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended ("Act"), herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA. All statements of the law in this Agreement that are written in the present tense shall be construed to be in either the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA or the regulations thereunder.

1 IV. The pertinent facts in this matter are as follows:

2 1. Buchanan for President, Inc., the principal campaign committee for Patrick J.
3 Buchanan's 1996 Republican presidential primary campaign, is a political committee within the
4 meaning of 2 U.S.C. § 431(4).

5 2. Buchanan Reform, Inc., the principal campaign committee for Mr. Buchanan's
6 2000 Reform Party presidential primary campaign, is a political committee within the meaning of
7 2 U.S.C. § 431(4).

8 3. Angela M. "Bay" Buchanan is, and was at the time of the activity addressed
9 herein, the treasurer of Buchanan for President, Inc. and Buchanan Reform, Inc. She was an
10 experienced treasurer, who was aware of the mandate to disclose financial transactions of
11 political committees and to abide by the Act's contribution limitations, having done so for a
12 number of previous committees.

13 4. Pursuant to 26 U.S.C. § 9038, the Commission audited Buchanan Reform, Inc.
14 and during the audit fieldwork the audit staff discovered an account entitled the "Buchanan
15 Fund."

16 5. Following the 2000 election, Ms. Buchanan sought funds for the "Buchanan
17 Fund," an account that she told contributors was not subject to the Act. A letter signed by and
18 sent from Ms. Buchanan soliciting funds to the Buchanan Fund stated:

19 The enclosed check represents the contributions you made to our campaign that exceeded
20 the legal limit on contributions to federal election campaigns.... [W]ith the advice of
21 counsel, I have established "The Buchanan Fund." It will be used to pay campaign
22 related expenses, which do not require "federal" dollars for payment. This means we may
23 ask for contributions even from those who have given the maximum contribution of
24 \$1000.00 to the campaign.... Again, your contribution to this fund is separate from your
25 generous contributions to Pat's campaigns, and will be used only for campaign related
26 expenses.

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1 6. At the time the treasurer of Buchanan for President, Inc. established the Buchanan
2 Fund she had no idea how she would use the money from this account, although it was solicited
3 for "campaign related expenses." The Buchanan Fund account was opened on March 5, 2001.
4 During 2001 the receipts into the Buchanan Fund totaled \$53,859 and disbursements totaled
5 \$48,551. The receipts came from either: (1) individuals who had made excessive contributions
6 to Buchanan Reform, Inc., received refund checks from that committee and endorsed them to the
7 Buchanan Fund (\$8,219); or (2) donors who made direct contributions to the Buchanan Fund
8 (\$45,520). Ms. Buchanan also asked some of the recipients of Buchanan Reform, Inc. excessive
9 contribution refund checks to endorse the checks to Buchanan for President, Inc.

10 7. The Buchanan Fund activities related to the winding down of the Mr. Buchanan's
11 1996 election campaign. For example, out of \$48,551 in disbursements from the Buchanan Fund
12 account in 2001, more than \$27,000 went to payments to the United States Treasury for stale-
13 dated checks from the 1996 campaign. Other disbursements from the Buchanan Fund included a
14 \$3,000 payment to a law firm that addressed its invoices to Buchanan for President, Inc.
15 (describing legal services performed in 1995 and 1996), and a \$250 disbursement to a moving
16 company in connection with Buchanan for President, Inc.

17 8. In MUR 4918, Buchanan for President, Inc. directed excessive contributions to a
18 "compliance" account it claimed was exempt from the Act's limitations; however, the
19 disbursements made from that account disqualified it from any exemption. The Commission
20 found reason to believe that the "compliance" account had accepted excessive contributions, and
21 the Commission explicitly admonished the "compliance" account treasurer (Ms. Buchanan) that
22 the committee's failure to treat certain accounts in compliance with the Act could result in a
23 violation. Ms. Buchanan admits that she received the Commission's admonishment letter.

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1 However, she disregarded written advice from the Commission involving the very same type of
2 conduct that Buchanan for President, Inc. engaged in less than two years later.

3 9. A political committee must deposit all receipts into a checking account at a
4 designated campaign depository, and it must make all disbursements (in excess of \$100) by
5 checks or similar drafts drawn on accounts at such a depository. 2 U.S.C. § 432(h); *see also* 11
6 C.F.R. § 103.3(a). Furthermore, a political committee must notify the Commission of all of its
7 designated depositories. 11 C.F.R. § 103.1.

8 10. A political committee is required to report certain information, including the
9 amount of cash on hand at the beginning of each reporting period, the total amount of receipts
10 and disbursements for the reporting period and calendar year, and the identity of certain
11 contributors. 2 U.S.C. § 434(b).

12 11. At the relevant time, the Act prohibited individual contributions to any candidate
13 and his authorized political committees with respect to any election for federal office which, in
14 the aggregate, exceeded \$1,000. 2 U.S.C. § 441a(a)(1)(A). Furthermore, the Act prohibits
15 political committees from accepting excessive contributions. 2 U.S.C. § 441a(f).

16 12. The phrase "knowing and willful" indicates that "acts were committed with a
17 knowledge of all the relevant facts and a recognition that the action is prohibited by law...."
18 H.R. Rpt. 94-917 at 3-4 (Mar. 17, 1976) (*reprinted in* Legislative History of Federal Election
19 Campaign Act Amendments of 1976 at 803-4 (Aug. 1977)); *see also National Right to Work*
20 *Comm. v. FEC*, 716 F.2d 1401, 1403 (D.C. Cir. 1983) ("knowing and willful" means "'defiance'
21 or 'knowing, conscious, and deliberate flaunting' [sic] of the Act"); *AFL-CIO v. FEC*, 628 F.2d
22 97, 98, 101 (D.C. Cir. 1980) ("willful" violation includes "such reckless disregard of the
23 consequences as to be equivalent to a knowing, conscious, and deliberate flaunting of the Act").

1 13. The Buchanan Fund was a federal account of Buchanan for President, Inc.

2 14. Buchanan for President, Inc. has failed to designate a depository containing the
3 Buchanan Fund account.

4 15. Buchanan for President, Inc. has failed to report the Buchanan Fund account's
5 activity.

6 16. The requirement to designate and report under the Act commenced at the time that
7 the Buchanan Fund began to receive money. A publicly funded committee may not create
8 accounts for "campaign related expenses" that operate outside of this regulatory regime, absent
9 narrow exceptions. Buchanan for President, Inc. has never identified a narrow exception that
10 could apply to the establishment and operation of the Buchanan Fund.

11 17. Given that the Buchanan Fund was a federal account of Buchanan for President,
12 Inc., individual contributions to the Buchanan Fund, when aggregated with other contributions to
13 Buchanan and his authorized committees for the 1996 election cycle (namely, Buchanan for
14 President, Inc.), were limited to \$1,000. Buchanan for President, Inc. received \$35,393 in
15 excessive contributions that it deposited in the Buchanan Fund (and it also received \$14,483 in
16 excessive contributions that it deposited into accounts other than the Buchanan Fund).

17 Ms. Buchanan conceded that the purpose of the Buchanan Fund was to obtain money from those
18 contributors who had reached their contribution limits for the Buchanan for President, Inc.
19 campaign.

20 18. Although Ms. Buchanan claimed she established the Buchanan Fund on advice of
21 counsel, she could not identify the attorney who gave her such advice, describe precisely what
22 the attorney said, or explain why she interpreted the advice as approval for the conduct at issue
23 here. She asserted that she could have received advice from one of two attorneys with whom she

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1 regularly conducted business, but neither of these attorneys remembers receiving a request from
2 Ms. Buchanan or advising her about the legality of the Buchanan Fund, and neither purports to
3 have rendered advice that it would be lawful to establish a separate committee to pay debts
4 incurred by Buchanan for President, Inc. In summary, the treasurer of Buchanan for President,
5 Inc. has provided no basis for her assertion of "advice of counsel."

6 V. Respondents violated 2 U.S.C. § 432(h) by failing to designate a campaign
7 depository with respect to the Buchanan Fund account, and by failing to deposit receipts into and
8 make disbursements from a checking account in a designated campaign depository. Respondents
9 will cease and desist from violating 2 U.S.C. § 432(h).

10 VI. Respondents violated 2 U.S.C. § 434(b) by failing to comply with the reporting
11 requirements for the Buchanan Fund account activity. Respondents will cease and desist from
12 violating 2 U.S.C. § 434(b).

13 VII. Respondents violated 2 U.S.C. § 441a(f) by accepting contributions to Buchanan
14 for President, Inc. in excess of the \$1,000 limitation. Respondents will cease and desist from
15 violating 2 U.S.C. § 441a(f).

16 VIII. Respondents will pay a civil penalty to the Federal Election Commission in the
17 amount of Thirty-five Thousand Dollars (\$35,000.00), pursuant to 2 U.S.C. § 437g(a)(5). Such
18 penalty shall be paid no more than 60 days from the date this Agreement becomes effective.

19 IX. Respondent Ms. Buchanan will amend the reports and schedules of Buchanan for
20 President, Inc. to reflect the activity of the Buchanan Fund; the Commission will supply her with
21 information to enable her to comply with this obligation.

22 X. The Commission, on request of anyone filing a complaint under 2 U.S.C.
23 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance

1 with this Agreement. If the Commission believes that this Agreement or any requirement thereof
2 has been violated, it may institute a civil action for relief in the United States District Court for
3 the District of Columbia.

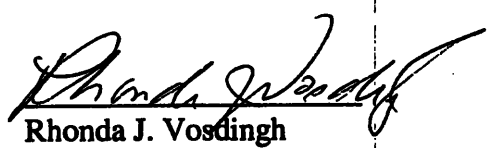
4 XI. This Agreement shall become effective as of the date that all parties hereto have
5 executed same and the Commission has approved the entire Agreement.

6 XII. Respondents shall have no more than 90 days from the date this Agreement
7 becomes effective to comply with and implement the requirements contained in this Agreement
8 and to so notify the Commission.

9 XIII. This Agreement constitutes the entire agreement between the parties on the
10 matters raised herein, and no other statement, promise, or agreement, either written or oral, made
11 by either party or by agents of either party, that is not contained in this written Agreement shall
12 be enforceable.

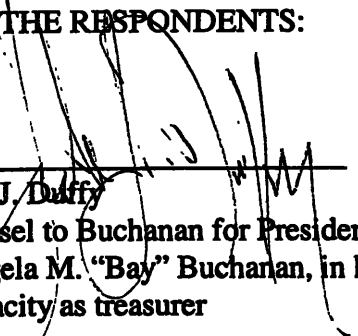
13 FOR THE COMMISSION:

14 Lawrence H. Norton
15 General Counsel

16 BY: 
17 Rhonda J. Vostdingh
18 Associate General Counsel

1/26/06
Date

19 FOR THE RESPONDENTS:

20 
21 John J. Duffy
22 Counsel to Buchanan for President, Inc. and
23 Angela M. "Bay" Buchanan, in her official
24 capacity as treasurer

1/13/06
Date